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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEW JERSEY**

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In re:	:	Chapter 11
BED BATH & BEYOND, INC., et al.,	:	Case No. 23-13359 (VFP)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
-----X		

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING KITE REALTY GROUP
TO FILE UNDER SEAL ITS UNREDACTED LEASES**

Kite Realty Group (“KRG”), as managing agent to Gateway Pavilions, L.L.C. (“Gateway”) and KRG New Hill Place, LLC (“New Hill”, collectively with Gateway and KRG, the “Landlord”) with respect to (i) Store No. 591 located in Avondale, Arizona and (ii) Store No. 1405 located in Holly Springs, North Carolina, hereby submits this motion (the “Motion to Seal”) for entry of an order authorizing Landlord to file under seal the Leases (defined below).

In support of the Motion to Seal, the Landlord respectfully represents:

JURISDICTION

1. This Court has jurisdiction to consider the Seal Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this Court. Since the Petition Date, the Debtors have continued to manage their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. No trustee has been appointed and Debtors are currently operating their businesses as debtors-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code. Debtors' Chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

4. On July 12, 2023, Landlord filed its objection to the Debtors’ assumption and assignment of the lease for the Premises (the “Assumption Objection”).¹

5. The Assumption Objection references the (i) Marshalls Avondale Lease, and (ii) Marshalls Holly Spring Lease (collectively, the “Leases”) and provides that the Debtors have failed to establish that their proposed assignee – Burlington Coat Factory Warehouse Corporation and/or one of its affiliates (“Burlington”) – will comply with the use and exclusivity provisions of the Leases.

¹ Docket No. 1330. All terms capitalized but not defined herein will be given the definitions assigned to them in the Assumption Objection.

RELIEF REQUESTED

6. By this Motion to Seal, the Landlord seeks entry of the proposed order, attached hereto as Exhibit A (the “Proposed Order”) (i) authorizing Landlord to file an unredacted copy of the Leases under seal; (ii) granting the Landlord leave to redact confidential portions of the Leases and (iii) ordering that the unredacted version of the Leases shall remain confidential and not be made available to anyone other than the Court.

CAUSE EXISTS TO FILE THE LEASES UNDER SEAL

7. Pursuant to Section 107(b) of the Bankruptcy Code:

On the request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may ... protect an entity with respect to a trade secret or confidential research, development, or commercial information....²

8. Bankruptcy Rule 9018 explains the process by which a party-in-interest may seek relief under Bankruptcy Code Section 107(b) as follows:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information....³

9. Landlord submits that the information contained in the Leases fall within the scope of information that the Court may protect pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which, if disclosed, would result in “an unfair advantage to competitors.”⁴ Section 107(b) is “designed to protect

² 11. U.S.C. § 107(b).

³ Fed. R. Bankr. P. 9018. *See also* Local Bankr. R. 5005-5.

⁴ *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)).

business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.”⁵

10. Burlington, the proposed assignee, is a direct competitor of Marshalls and the confidential information contained in the Leases consist of financial and business terms, disclosure of which may be detrimental to Marshalls’ business. Accordingly, Landlord requests entry of an order authorizing it to redact confidential information included in the Leases prior to filing it with the Court.

WHEREFORE Landlord respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

⁵ *Id.*

Dated: July 24, 2023

Respectfully submitted,

/s/ Robert L. LeHane

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